

**(114) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.17656 of 2016.

Date of decision: August 29, 2016.

Pardeep Kumar Rapria, Advocate

.....Petitioner.

Versus

Bharitya Janta Party and others

....Respondents.

**CORAM:- HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Pardeep Kumar Rapria, petitioner in person.

S.S. Saron, J.

This petition has been filed seeking a writ in the nature of mandamus directing respondents No. 1 to 8, which are political parties to implement the provisions of the Right to Information Act, 2005 (for short - 'the RTI Act') in their office/s in terms of the final decision dated 03.06.2013 (Annexure P-5) of the Central Information Commission (for short - 'the Commission'). A further direction has been sought for empowering the Central Information Commission/State Information Commissions to ensure the compliance of its orders. It is further prayed for directing the respondents to implement the National

Commission on Farmers' 5th and final report dated 04.10.2006 (Annexure P-3) and the report (Annexure P-4) submitted by a Group of Ministers in the year 2010 in terms of the election manifestos (Annexures P-7 and P-8) of respondents No. 1 and 2, which are political parties. It is further prayed for calling the relevant records from the office of respondents' No. 1, 2, 8 and 9 to check the steps taken to implement their pledges to the farmers to the limited extent of their manifestos relating to agricultural reforms. It is further prayed for directing the Election Commission of India to take steps to get implemented the election manifestos of the political parties and also ensure compliance of the provisions of the RTI Act in the functioning of political parties.

The petitioner is a practising lawyer, primarily, in the Supreme Court of India and in this Court. It is submitted that he has rendered services to the Commission and National Investigation Agency as a Legal Consultant/Legal Retainer. He is involved in social activities and has rendered legal service to the 'Justice Onkar Singh Free Legal Aid Service Trust' headed by Sh. K.T.S. Tulsi, Senior Advocate. He is M.A., LLB; PGD in Journalism and Mass Communication; PGD in Cyber Law, PGD in Intellectual Property Laws and General Course in Intellectual Property Rights (WIPO, Geneva). He has no personal interest in litigation and that the petition is not guided by self-gain or for gain of any other person/institution/ body and that there is no motive other than that of public interest in filing the writ petition.

It is submitted by way of clarification that the petitioner

belongs to an agricultural family and his near dear family members and relatives are involved in agricultural activities as a source of their livelihood since immemorial times. The petitioner has 1/15 share in land measuring 140 kanals 7 marlas, i.e. 9 kanals 7 marlas, situated in revenue estate of village Balu, Tehsil Kalayat, District Kaithal. The district of the petitioner shares its boundary with District Patiala in the State of Punjab. It is submitted that the petitioner is entitled to seek information under the RTI Act from the respondents - political parties without giving any reason. It is further stated that the petitioner is a registered voter and would participate in democracy in a more transparent and effective manner. Therefore, it is submitted that if the present public interest litigation is allowed, the petitioner along with other lakhs and lakhs of citizens would be direct as well as indirect beneficiaries of the relief. Due to involvement of the aforesaid personal interest in the matter, the petitioner filed CWP No.10477 of 2016. However, the said petition was disposed of vide order dated 28.07.2016 (Annexure P-15), which reads as under:-

“After hearing the petitioner, this Court is of the opinion that the cause shown in this petition is largely of a public nature, therefore, the petitioner may, if so advised, file Public Interest Litigation.”

Therefore, the present petition has been filed.

We have heard the petitioner who is appearing in person at considerable length and gone through the voluminous paper book that has been filed. The primary relief that has been claimed by the

petitioner is for implementation of the RTI Act by political parties in terms of decision taken by the Commission in its order dated 03.06.2013 (Annexure P-5). It is to be noticed that the petitioner was not a party to the said decision dated 03.06.2013 (Annexure P-5). The same was filed by two complainants namely Subhash Chandra Aggarwal and Anil Bairwal against six political parties. The Commission in terms of its order dated 03.06.2013 (Annexure P-5) disposed of the petition. The operative part of the order reads as follows:-

“92. In view of the above discussion, we hold that INC, BJP, CPI (M), CPIO, NCP and BSP have been substantially financed by the Central Government under Section 2(h) (ii) of the RTI Act. The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h). The constitutional and legal provisions discussed herein above also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No.CIC/MISC/2009/ 0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under Section 2(h) of the RTI Act.

93. The Presidents, General/Secretaries of these

Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in 06 weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in 04 weeks time. Besides, the President/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of section 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.

94. The complaints are disposed off as per the above directions.”

The said order was not implemented, therefore, the matter was agitated again by the said complainants i.e. Subhash Chandra Aggarwal and Anil Bairwal, which has been disposed of vide order dated 16.03.2015 (Annexure P-11). The Commission decided as follows:-

“69. We have arrived at the conclusions above taking into account that the Commission's order of 03.06.2013 was not challenged in any court. As per the Commission's order, which is final and binding, the respondent national political parties are public authorities under the RTI Act.

70. It is clear that the respondents have not implemented, as public authorities, the directions

contained in the Commission's order. In this light, the provisions for penalty and compensation were examined. It is felt that though the respondents have not taken any step towards compliance, the legal position is such that in this case imposition of penalty and award of compensation cannot be considered.

71. The following is decided:

- (a) the respondents are not in compliance with the Commission's order of 03.06.2013 and the RTI Act. The respondents, as public authorities, have not implemented the directions contained in the Commission's order and there is no evidence of any intention to do so;
- (b) the submissions made by the complainants for the imposition of penalty and the award of compensation are not allowed in view of legal considerations;
- (c) the prayer for making recommendations to public authorities, reference para 68(6), above, is not allowed;
- (d) a copy of this order be sent to the Department of Personnel and Training, Government of India, for taking action as deemed appropriate for addressing the legal gaps and issues that have come to light during the hearings, including those mentioned in

para 68 (7) above, with a view to ensuring compliance of this Commission's order; and

(e) the complainants are at liberty, in view of the facts and circumstances of this case, to approach the higher courts for appropriate relief and redressal."

A perusal of the above shows that recommendations were made in para 68 (7) to the Department of Personnel and Training, Government of India for taking action as deemed appropriate or addressing the legal gaps. In respect to the prayers that have been made, several issues would arise including that as to whether the political parties against whom relief is sought, would be amenable to the writ jurisdiction of this Court and as to whether these are a 'State' within the meaning of Article 12 of the Constitution.

The petitioner has contended that in terms of order dated 03.06.2013 (Annexure P-5) passed by the Commission, it has held the political parties 'to be public authority' within the meaning of Section 2 (h) of the RTI Act. However, merely because a political party has been declared as a 'public authority' it would not necessarily come within the ambit of 'State', for the purpose of Article 12 of the Constitution.

The Hon'ble Supreme Court in Thalappalam Service Coop. Bank Limited and others v. State of Kerala and others (2013) 16 SCC 82 held that there may be a Constitution where body or organisation though not a State or an instrumentality of the State under Article 12 of the Constitution may still satisfy the definition of 'public authority' within the meaning of Section 2 (h) of the RTI Act. Therefore, merely

because political parties have been declared 'public authority' under the RTI Act would not *per se* make it a 'State' for the purpose of Article 12 of the Constitution so as to make it amenable to the writ jurisdiction of the High Court.

Even otherwise, the orders that are passed by the Commission are not to be executed by the High Court and in case there are lacunas, shortcomings or deficiencies in the provisions of the RTI Act, the same are to be examined by the legislature and the High Court is not to issue directions for legislation. A High Court has no jurisdiction to direct the State to introduce a particular legislation.

In V.N. Naswa v. Union of India (2012) 2 SCC 542, the Supreme Court held that the Court can neither legislate nor issue a direction to the legislature to enact the law in a particular manner. The Court has a very limited role and in exercise of that, it is not open to have judicial legislation. In exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field.

In any case, it is noticed that the order that has been passed by the Commission is in Delhi and no cause of action has been shown to have accrued to the petitioner within the territorial jurisdiction of this Court. In terms of sub Article (2) of Article 226 of the Constitution, the power conferred by clause (1) of Article 226 to issue directions, orders or writs to any Government, authority or person may be exercised by any High Court exercising jurisdiction in relation to the

territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

The petitioner seeks to invoke the jurisdiction that he has his residence within the State of Haryana and, therefore, he has the cause of action to file the petition in this Court. However, the petitioner may have a right of action within the territorial jurisdiction of this Court but the same would not confer on him a cause of action. Article 226 of the Constitution confers on every High Court the power to issue certain writs throughout the territory in relation to which it exercises jurisdiction for the enforcement of any right conferred by Part III of the Constitution and for any other purpose. Sub-Article (2) of Article 226 of the Constitution reads as follows:-

“(2) The power conferred by clause (1) to issue direction, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

In Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC, 640 the Supreme Court held that from the provisions of

clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part within the territorial jurisdiction of this Court. In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in a Court from another. Therefore, the petitioner is liable to show as to what cause of action has accrued in his favour within the territorial jurisdiction of this Court so as to entitle him to file the present petition.

The petitioner further submits that he has a cause of action in terms of Section 4 of the RTI Act. Section 4 of the RTI Act confers obligation of public authorities. The obligation to furnish information may be there but it is not the case of the petitioner that he has sought any information, which has been declined to him. As has already been noticed, the decision that has been taken by the Commission on 03.06.2013 (Annexure P-5) and its implementation on 16.03.2015 (Annexure P-11), the petitioner admittedly is not a party to any of the decisions. We asked the petitioner whether those who are complainants/petitioners in the said petition had assailed the said orders, the petitioner submits that he has no information and he is unable to state whether the orders have been challenged.

Therefore, it would be iniquitous to venture into to examine the veracity of the same as those may be the subject matter of lis before a competent Court. Be that as it may, we have held that the

petitioner has no cause of action within the territorial jurisdiction of this Court and merely by his residence being within the territorial jurisdiction of this Court, would not confer any cause of action on him.

In the circumstances, the writ petition is ordered to be returned to the petitioner in terms of Order VII Rule 10 of the Code of Civil Procedure, 1908.

The petition is, accordingly, ordered to be returned to the petitioner.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

August 29, 2016
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Note:	1. Whether speaking/reasoned:	Yes
	2. Whether reportable:	Yes